APPEAL NO. 032082
FILED SEPTEMBER 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 23, 2003. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury on _____; that the respondent (carrier herein) is relieved of liability because the claimant did not timely report his injury; that the carrier has not waived the right to contest compensability because the carrier did so timely; and that the claimant did not have disability. The claimant has appealed on evidentiary sufficiency grounds. The carrier responds and requests that the claimant's appeal be deemed inadequate as a matter of law. Alternatively, the carrier urges affirmance on evidentiary sufficiency grounds.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The carrier asserts that the claimant's request for review fails to invoke the jurisdiction of the Appeals Panel because it fails to clearly and concisely rebut each issue on which review is sought and does not meet requirements of Section 410.202(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)). No particular form of appeal is required and an appeal, even though terse or inartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993. Generally, an appeal that lacks specificity will be treated as a challenge to the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We consider the claimant's appeal to be a minimally sufficient challenge to the sufficiency of the evidence supporting the hearing officer's decision.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex.

Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case the hearing officer found no injury contrary to the testimony of the claimant. The claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). Here there was conflicting evidence as to when the claimant notified the employer and the carrier of his injury. It was the province of the hearing officer to resolve these conflicts. Again, we cannot say the hearing officer erred as matter of law in finding the claimant did not meet his burden to prove notice.

Section 409.021 provides that the insurance carrier shall not later than the seventh day after the date on which the insurance carrier receives written notice of an injury begin the payment of benefits or notify the Commission and the injured employee in writing of its refusal to pay. The Supreme Court of Texas in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) held that the failure of a carrier to comply with the pay or dispute provision resulted in the carrier waiving its right to contest compensability. In the present case the carrier waiver issue hinges on the date the carrier first received written notice. The hearing officer found that the carrier first received written notice of an injury on August 27, 2002. Given this date of first written notice, the carrier clearly disputed the injury within seven days.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. *See* Section 401.011 (16).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY**
**800 BRAZOS**
**AUSTIN, TEXAS 78701**.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Villano
Appeals Judge